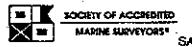


Exhibit “B”

CONSULTING & MARINE SURVEYING

RV "Chuck" Wagner III
Licensed Captain



Member of
ABYC

941-758-3552
941-748-6847

7070 15th Street East
Sarasota, FL 34243

Condition Survey

Model: 38 ZX Daytona

Year: 2003

Hull Identification: DNAZ28001E203

Manufacturer: Donzi

Type of Usage: Pleasure

Hull Material: Fiberglass

Vessel Name: Mistifier

Date of Inspection: August 17, 2004

Location of Inspection: Erie Yacht Club
Erie, Pa.
Vessel out of water on stands

Inspection requested By: F. Steven Herb
Nelson Hesse Attorney's At Law
2070 Ringling Boulevard
Sarasota, Fl. 34237

Owner of Vessel: Thomas Mertz

Present at Inspection: Mr. Mertz and his attorney Mathew Fuchs

Specifications:

LOA: 37' 9"

Beam 9' 3"

Draft Down: 40"

Draft Up: 28"

Fuel Capacity: 225 gallon

Weight Hull (approximately): 11,500 lbs

Headroom: 5' 10"

Fresh Water Capacity: 31 gallon

Holding Tank: 10 gallon

Propulsion:

Twin Mercruiser Inboard/Outboard Engines

Port Engine Model: 575SCI

Port Engine Serial Number: OM900086

Port Engine Out Drive Serial Number: OM133721

Port Transom Plate Number: OM053037

Starboard Engine Model: 575SCI

Starboard Engine Serial Number: OM900071

Starboard Engine Out Drive: OM13372

Starboard Transom Plate Number: OM053017

Propeller Size: 30" Pitch

Type of Fuel: Gasoline

Electronic Accessories:

Lowrance GPS Global Map 2400

Azimuth 1000

Scope of Assignment:

Inspect overall condition of vessel and review current and past complaints made by owner

Forward Deck Area:

A moisture reading was taken of entire deck area, around bow light and hatches. Meter read dry on all areas. Reading were taken by Charles Miller, Accredited Marine Surveyor, of North Coast Marine Services, in Erie, Pa. on August 22, 2004.

Helm Area:

Dash Panel was loose, customer doing some wiring and adding additional instrumentation, (water pressure gauges)

Aft Cockpit Area:

Very good condition

Owner has made several inspection accesses under rear bench seat and modified rear bench support

Cabin Area & Equipment:

Very clean, upholstery in good shape

All shore power switches power up

Sony Stereo and CD Changer power up

Owner has also made inspection accesses under seating in order to do repairs and clean reported fiberglass dust from areas behind and below seating.

Owner reports he still has fiberglass dust coming out of cabin after usage.

Owner has made a storage area under V-Berth for top hardware

Engine Room:

STBD Engine has exhaust headers removed

Owner reported the engine overheated while flushing the engines. Although temperature gauge remained at 120 degrees. He reported that the engine started smoking and when he touched the headers they felt like they were 3 or 4 hundred degrees. When shutting down engine he heard a cracking noise, like heat expansion of metal.

Owner reported finding water in the oil. Owner reported that he has run the engine dry at least five times for a short duration and changing oil until there was no more indication of water in the oil.

An inspection of the engine found the belt had not been removed from the raw water pump. I ask Mr. Mertz why he did not remove the belt. He said he wanted to test the new raw water pump to see what happens while being run dry.

Hull Sides:

Overall very good condition

There is a slight protrusion of the STBD side engine room bulkhead near hull to deck joint.

Slight rub rail damage on STBD stern at corner

Hull Bottom:

Very good condition

No gelcoat damage was observed

Dewatering Systems:

Owner indicated all bilge pump and float switches were operational, I was unable to test.

Summary of Observation and Conclusion:

Mr. Mertz reported to this surveyor that he had made the following modifications and repairs to the vessel.

Enlarged inspection area to fuel vent and fill hoses on port side

Invented and installed a gas vent burp valve in the gas vent hose. He reports that the gas will spill from the vent several times during fueling. He believes this to be excessive and an environmental danger and safety hazard.

Created a higher loop in gas vent hose

Inspection hole on STBD side under aft seating for viewing of holding tank

Made two cut outs in (King Starboard) hatch below rear seat cushion. Installed a rubber bladder material over cut outs for a softer ride.

Cut out inspection and access holes under cabin seating

Reconfigured air conditioner drain hose and added T-fitting so forward air conditioner drain would drain. Hose was reported to be mounted too high from factory to drain air condition condensation.

Installed stainless bowl over rear of speaker in cabin, so water could not get on speaker.

Added a stainless steel Bimini top

Made a new cockpit cover with stainless steel bow, so cover will not touch upholstery

Modified V-berth upholstery so that vinyl cover can be removed and install fitted sheets for more comfort. Piping on V-berth upholstery sticks up and is uncomfortable to lay on.

Modified areas under V-berth mattress for storage of stainless steel frames.

Enlarge the center seating area bunk cushion and support system in cabin so that the entire seating area becomes one enlarged sleeping area.

Replaced damaged purple carpet in cabin floor with gray carpet.

Replaced counter top formica under TV area.

Replaced table top formica.

Wired the sump pump to an existing switch on the dash so that the sump pump could be checked manually, not just auto switch.

Is in the process of installing water pressure gauges.

Installed a GPS speedometer that was supplied by the selling dealer.

Repositioned port hatch lift actuator

Modified outdrive trim indicator cables so they would not chafe on bolts (see pictures # 6, 7, & 8)

Has replaced both raw water pumps

Port outdrive transom plate assembly had been replaced by dealer because of severe gouging or gaulding on the inside of guide area. The reported cause was that one trim pump motor ran faster than the other, causing the outboard tie rod to put undue pressure on the port drive.

Repaired a leak on forward bow hatch

Repaired a broken bow light and sealed properly

Companion way door trim was replaced. Mr. Mertz indicated he still has an excessive opening in the door and it is not weather tight.

After reviewing Mr. Mertz modifications and repairs, it appears that most items have been resolved. Although the possible cracked engine block or cylinder head have not been addressed. Until a proper inspection is completed of the engine, it is impossible to address what repairs need to be made. The assumed problem could be as minor as a head gasket or as severe as a cracked block. All of which can be remedied.

The raw water pumps that I viewed were definitely run dry. Normally when this type of water pump is run dry it takes a very short period of time to cause severe damage to the impeller and it's housing. For a water pump to be run dry for a duration of time at an early stage of it's usage and then 30, 40, or 50 hours later deteriorate such as these raw water pumps did (notably the STBD

pump) is highly unlikely. The STBD engine definitely was over heated, additional proof is the condition of the exhaust flaps, as seen in pictures # 44 and 45.

This surveyor's opinion is the gas vent thru hull fitting is mounted too low in relationship to the fuel fill causing the excessive gas over flow reported by owner.

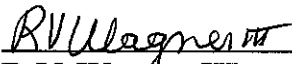
Although I viewed the area that Mr. Mertz reported he found human feces, I was unable to establish the evidence of this. Admittedly reported he had cleaned this area. Although some staining of this area existed I could not establish the claim.

Inspection areas that have been under cabin seating should have rounded corners and a hatch installed. If corners are left squared this area could possibly crack in the future.

Mr. Mertz seems to appropriately maintain vessel and has repaired most items quite well. Although it seems in this surveyor's opinion that Mr. Mertz wants a 90 to 100 MPH cabin cruiser. Several modifications would not be in the normal high performance boat features, such as a bimini top, extended beds for overnight sleeping, or rear seat modifications for a softer seating.

Terms, Conditions, and Limitations

All attempts are made by the undersigned surveyor to make a complete and thorough inspection of the vessel, except as noted. The survey remarks, comments, and recommendations set forth herein are the best determined opinions of the surveyor, and may not be interpreted or accepted as a statement of warranty or one of actual fact. The survey is based on the facts presented and discovered. This survey is made without prejudice and under the scope of survey requested. This surveyor issues no guarantees to accuracy, condition, and sea worthiness of the vessel and surveyor reserves the right to change his opinion if new information arises. The undersigned surveyor cannot be held liable or responsible for any determined inaccuracy, misstatement of fact, omission, or error in judgment or opinion. Acceptance of this report shall constitute acceptance to this disclaimer.



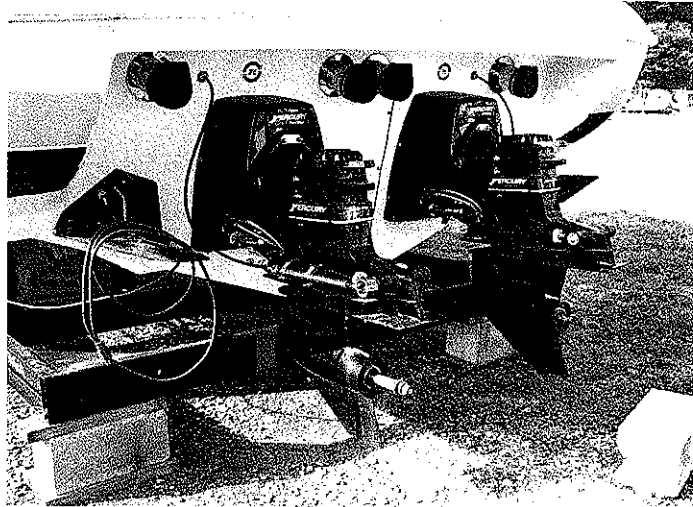
R.V. Wagner III

Hull ID No: DNAZ8001E203

Photo No: 01

Date Taken: 08/17/04

Comments: Transom View

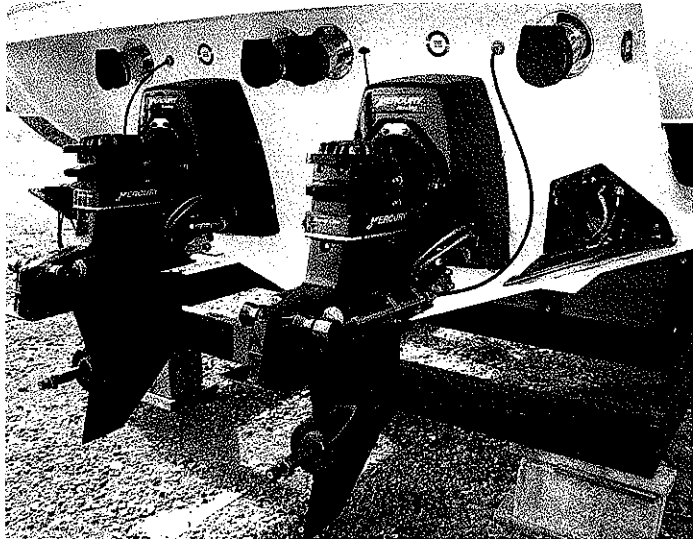


Hull ID No: DNAZ8001E203

Photo No: 02

Date Taken: 08/17/04

Comments: Transom View



Hull ID No: DNAZ8001E203

Photo No: 03

Date Taken: 08/17/04

Comments: Hull ID



Hull ID No: DNAZ8001E203

Photo No: 04

Date Taken: 08/17/04

Comments: Port View

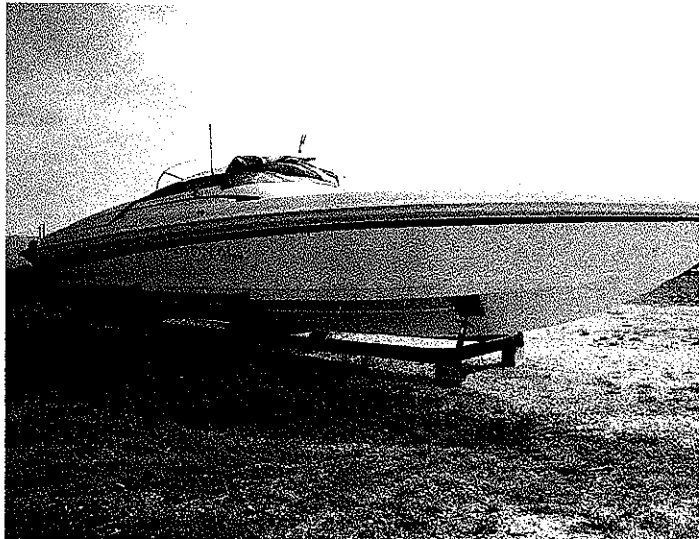


Hull ID No: DNAZ8001E203

Photo No: 05

Date Taken: 08/17/04

Comments: STBD View



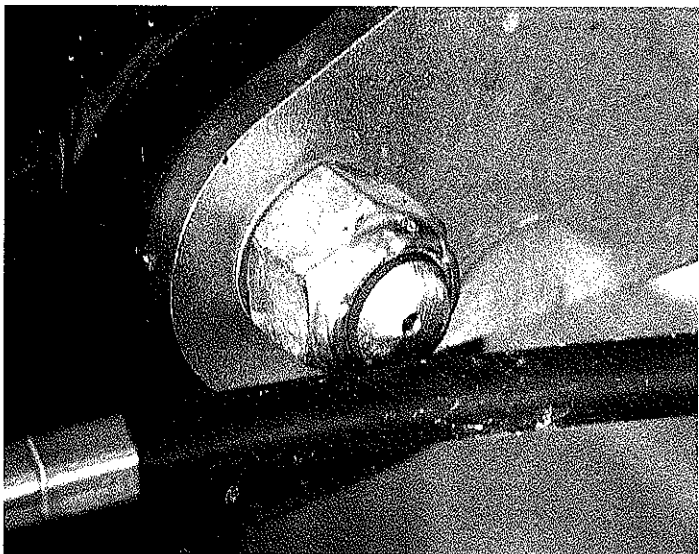
Hull ID No: DNAZ8001E203

Photo No: 06

Date Taken: 08/17/04

Comments: Trim Tab Indicator

Cable at STBD Outdrive



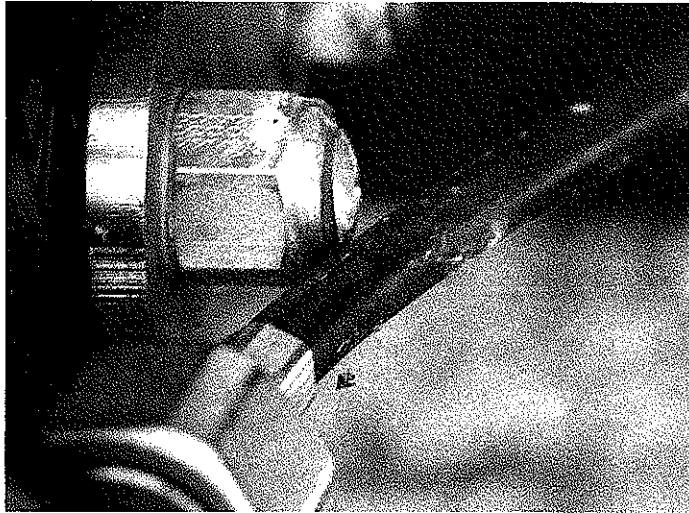
Hull ID No: DNAZ8001E203

Photo No: 07

Date Taken: 08/17/04

Comments: Outdrive Trim

Indicator Cable at STBD



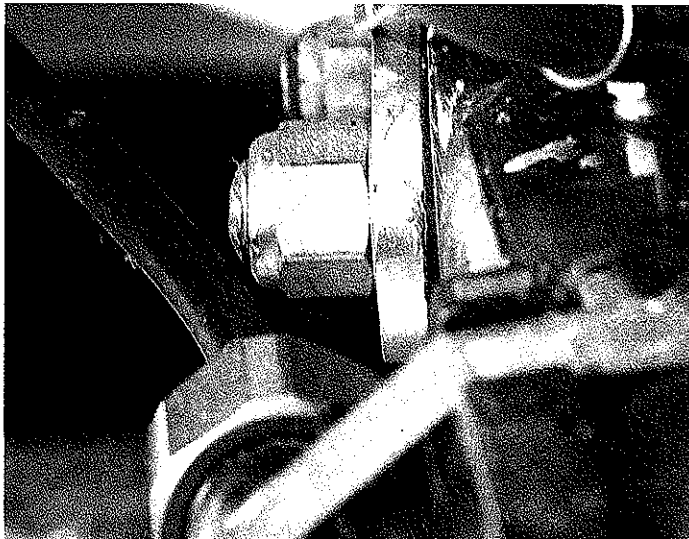
Hull ID No: DNAZ8001E203

Photo No: 08

Date Taken: 08/17/04

Comments: Outdrive Trim

Indicator Cable at Port

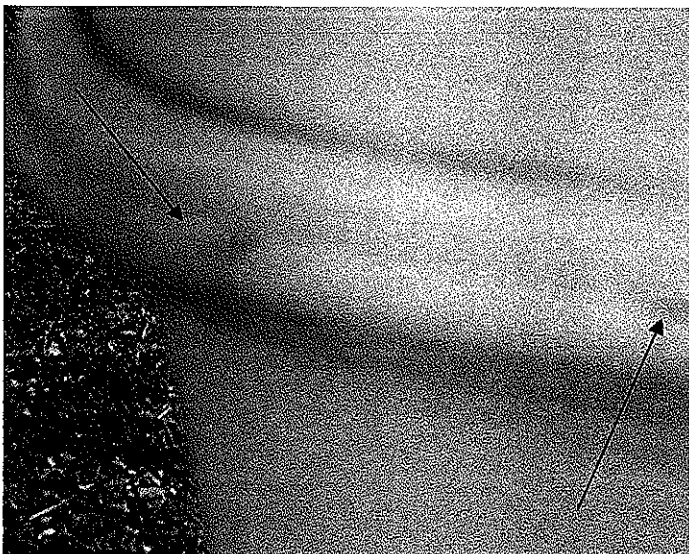


Hull ID No: DNAZ8001E203

Photo No: 09

Date Taken: 08/17/04

**Comments: Rub Rail Damage at
STBD Stern Corner**



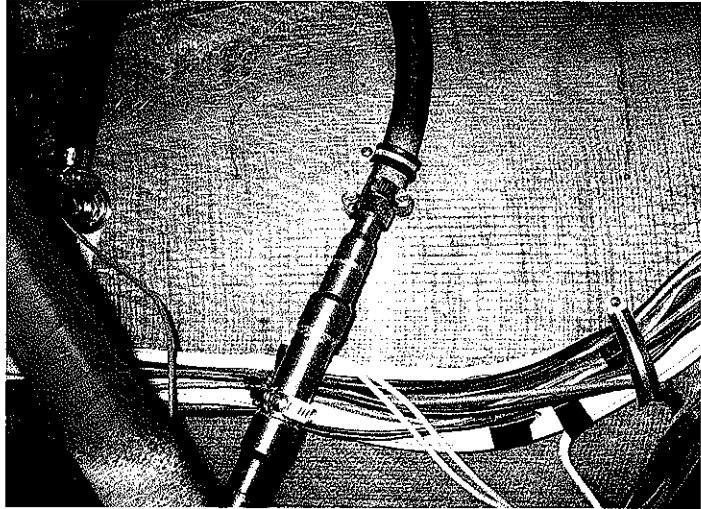
Hull ID No: DNAZ8001E203

Photo No: 10

Date Taken: 08/17/04

Comments: Owners Invention

Baffled Gas Vent

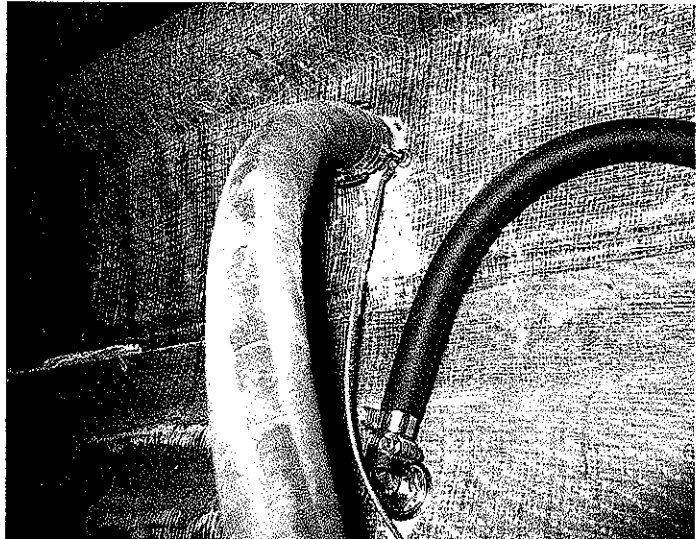


Hull ID No: DNAZ8001E203

Photo No: 11

Date Taken: 08/17/04

**Comments: Inside View of Gas Fill
And Vent**

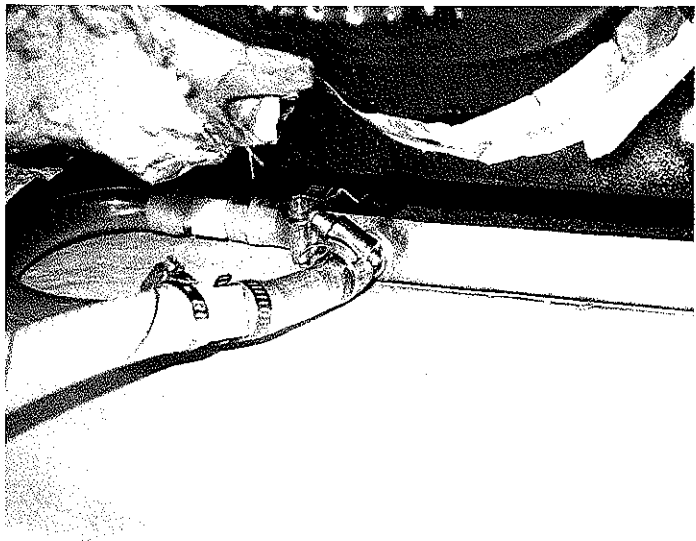


Hull ID No: DNAZ8001E203

Photo No: 12

Date Taken: 08/17/04

**Comments: Owners Revised Air
Conditioning Drain**

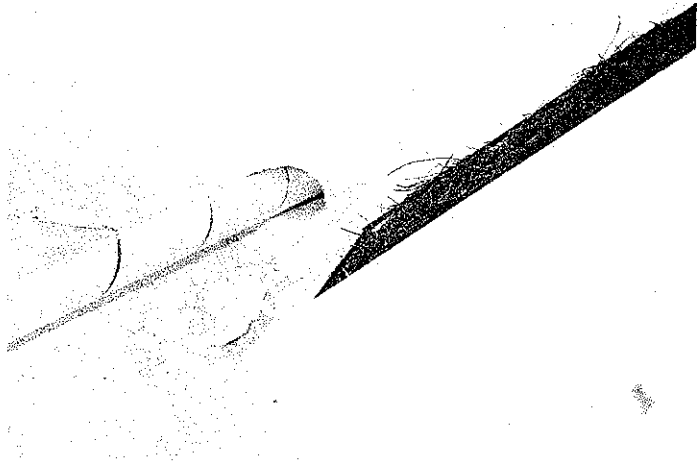


Hull ID No: DNAZ8001E203

Photo No: 13

Date Taken: 08/17/04

**Comments: Access Hole for Air
Conditioning Drain Created by
Owner**

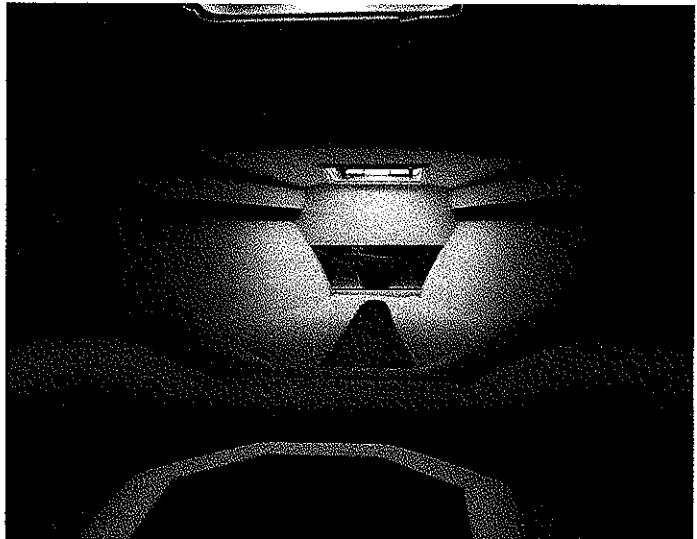


Hull ID No: DNAZ8001E203

Photo No: 14

Date Taken: 08/17/04

Comments: V-Berth Area



Hull ID No: DNAZ8001E203

Photo No: 15

Date Taken: 08/17/04

Comments: Galley Area

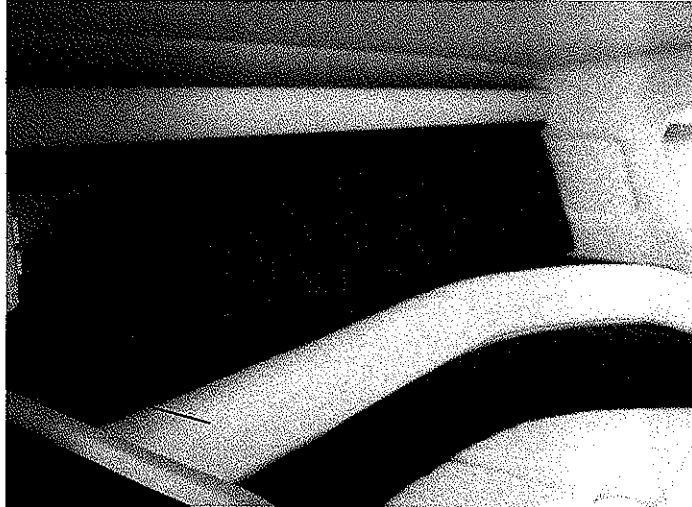


Hull ID No: DNAZ8001E203

Photo No: 16

Date Taken: 08/17/04

**Comments: Port Extended Bunk
Cushion in Storage Area Created
by Owner**



Hull ID No: DNAZ8001E203

Photo No: 17

Date Taken: 08/17/04

Comments: TV Area

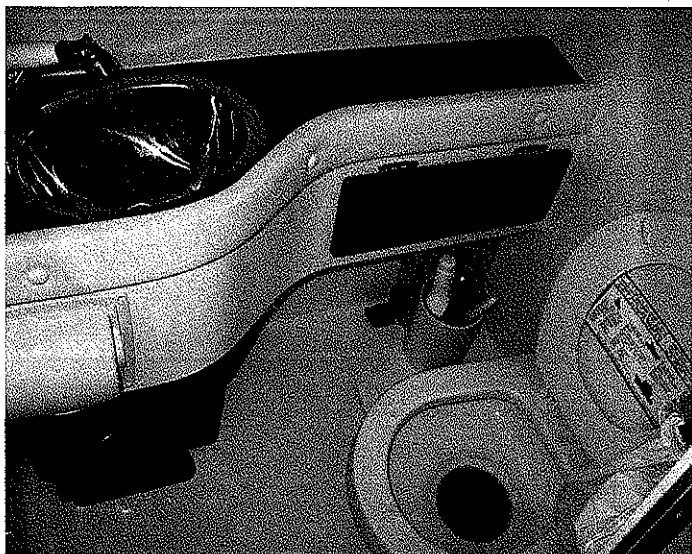


Hull ID No: DNAZ8001E203

Photo No: 18

Date Taken: 08/17/04

Comments: Head Area

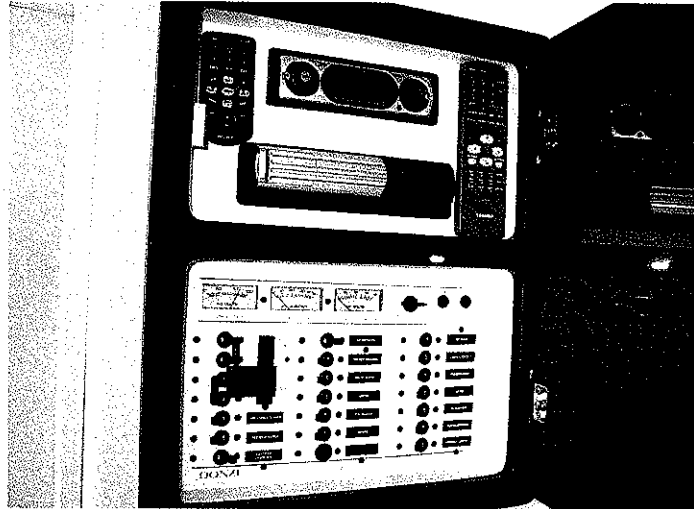


Hull ID No: DNAZ8001E203

Photo No: 19

Date Taken: 08/17/04

Comments: AC/DC Panel



Hull ID No: DNAZ8001E203

Photo No: 20

Date Taken: 08/17/04

**Comments: Storage for Bimini Top
Frame Under V-Berth (owners
creation)**



Hull ID No: DNAZ8001E203

Photo No: 21

Date Taken: 08/17/04

Comments: Air Conditioner



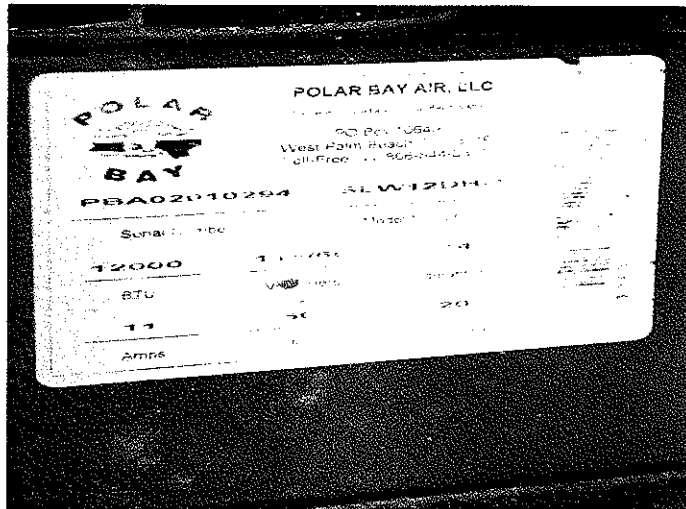
Hull ID No: DNAZ8001E203

Photo No: 22

Date Taken: 08/17/04

Comments: Air Conditioner

Specifications



Hull ID No: DNAZ8001E203

Photo No: 23

Date Taken: 08/17/04

Comments: Global Map



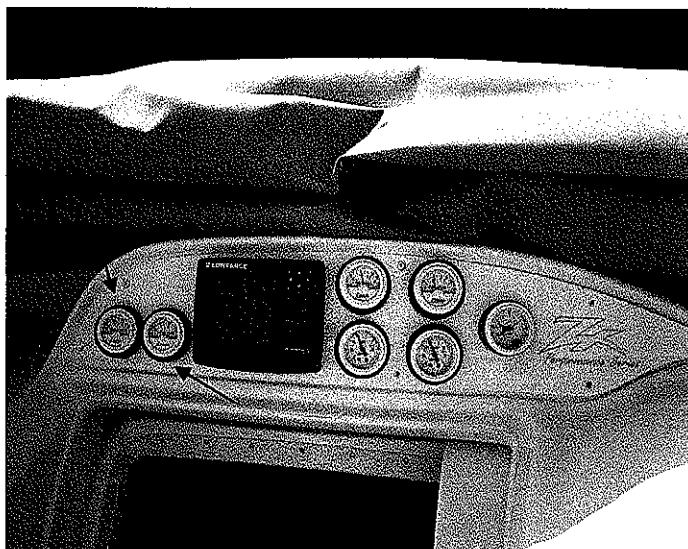
Hull ID No: DNAZ8001E203

Photo No: 24

Date Taken: 08/17/04

Comments: Instrument Panel Above

Cabin Entry (note water pressure gauges indicated by arrows were installed by owner)

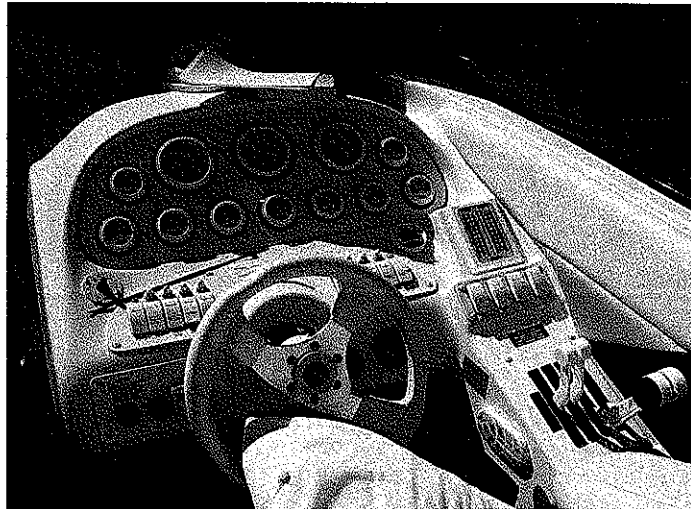


Hull ID No: DNAZ8001E203

Photo No: 25

Date Taken: 08/17/04

Comments: Helm Area

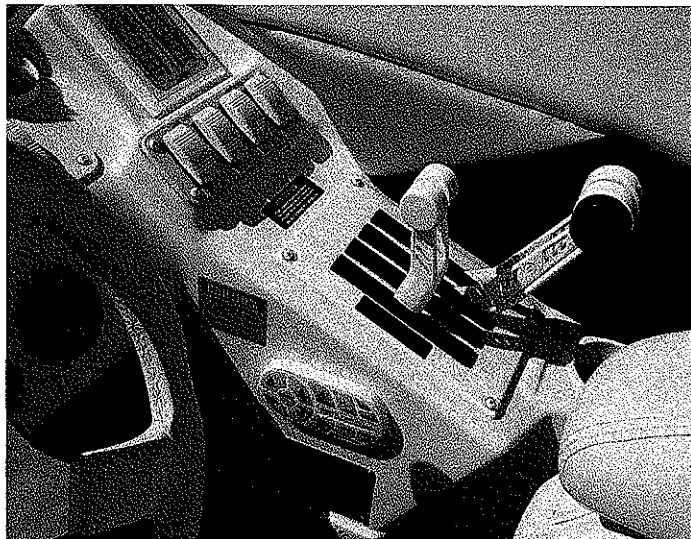


Hull ID No: DNAZ8001E203

Photo No: 26

Date Taken: 08/17/04

**Comments: Shift and Throttle
Controls**



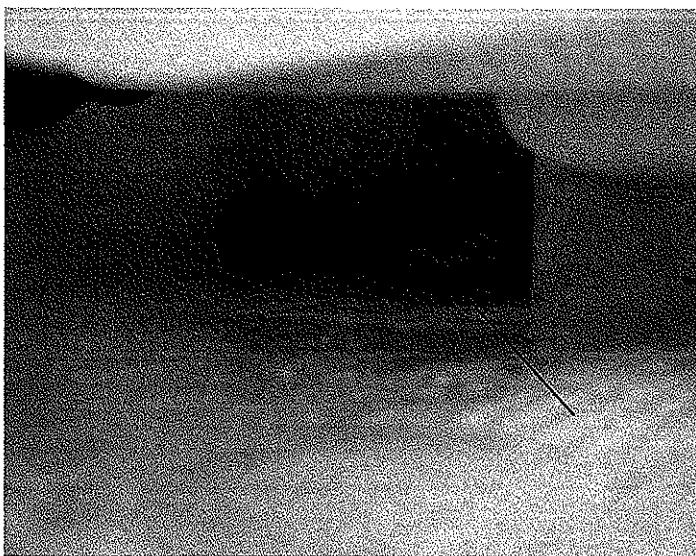
Hull ID No: DNAZ8001E203

Photo No: 27

Date Taken: 08/17/04

Comments: Hull Bottom Area in

**Front of Waste Pump. (where
customer reported finding human
feces)**



Hull ID No: DNAZ8001E203

Photo No: 28

Date Taken: 08/17/04

Comments: Another View of

Picture #27

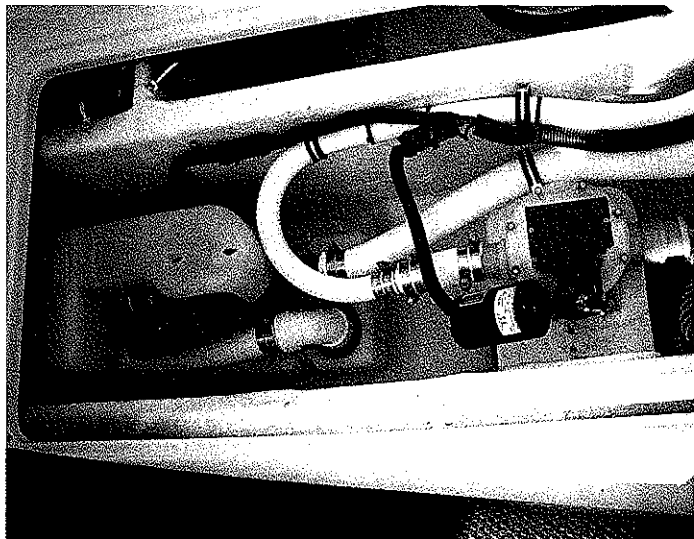


Hull ID No: DNAZ8001E203

Photo No: 29

Date Taken: 08/17/04

**Comments: Head Pump Out
System**

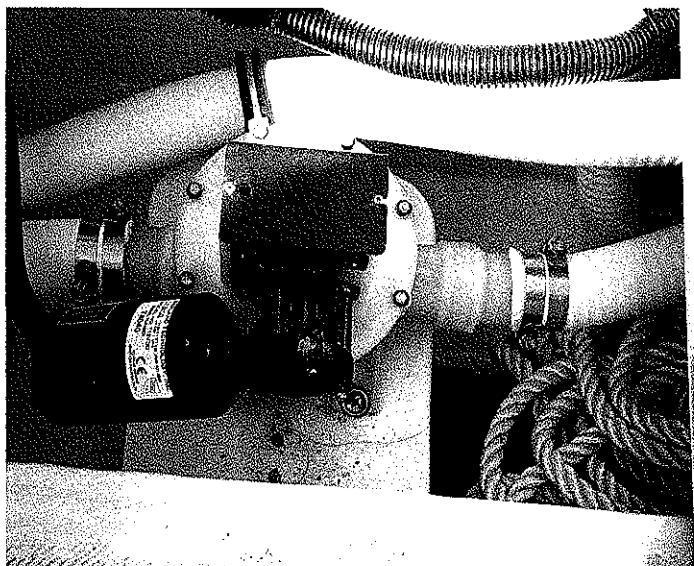


Hull ID No: DNAZ8001E203

Photo No: 30

Date Taken: 08/17/04

**Comments: Another View of Head
Pump Out**



Hull ID No: DNAZ8001E203

Photo No: 31

Date Taken: 08/17/04

Comments: Holding Tank

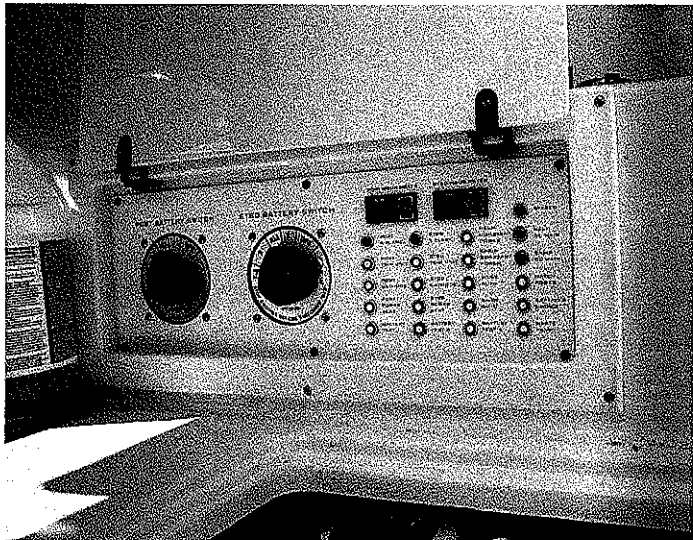


Hull ID No: DNAZ8001E203

Photo No: 32

Date Taken: 08/17/04

**Comments: Battery Switches and
Circuit Breaker Panel in Cockpit**



Hull ID No: DNAZ8001E203

Photo No: 33

Date Taken: 08/17/04

**Comments: Wiring Installation
Under STBD Cockpit Access Hatch**

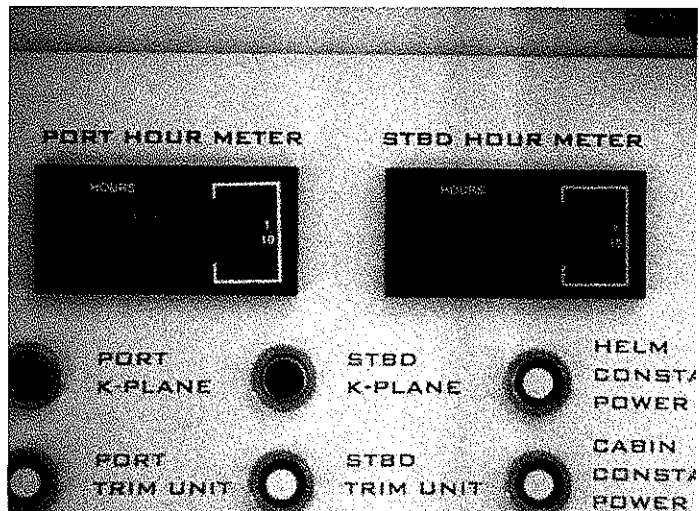


Hull ID No: DNAZ8001E203

Photo No: 34

Date Taken: 08/17/04

Comments: Engine Hour Meters

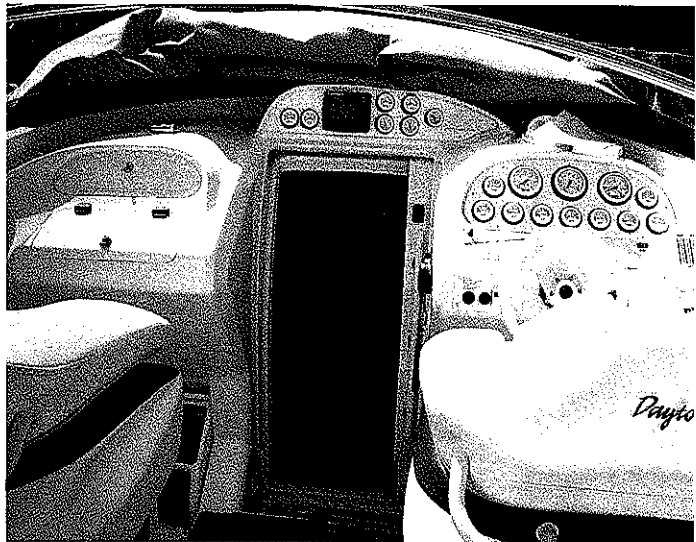


Hull ID No: DNAZ8001E203

Photo No: 35

Date Taken: 08/17/04

Comments: Forward Cockpit Area



Hull ID No: DNAZ8001E203

Photo No: 36

Date Taken: 08/17/04

Comments: Aft Bench Seat

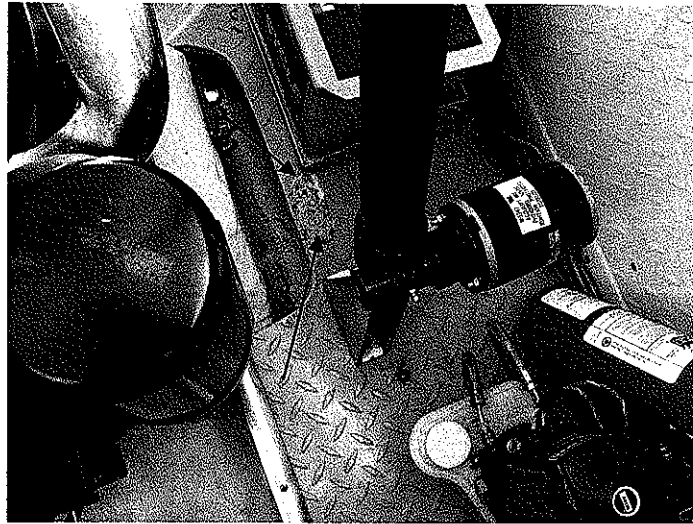


Hull ID No: DNAZ8001E203

Photo No: 37

Date Taken: 08/17/04

**Comments: Port Engine Hatch Lift
(arrows indicate previous mounting
area)**

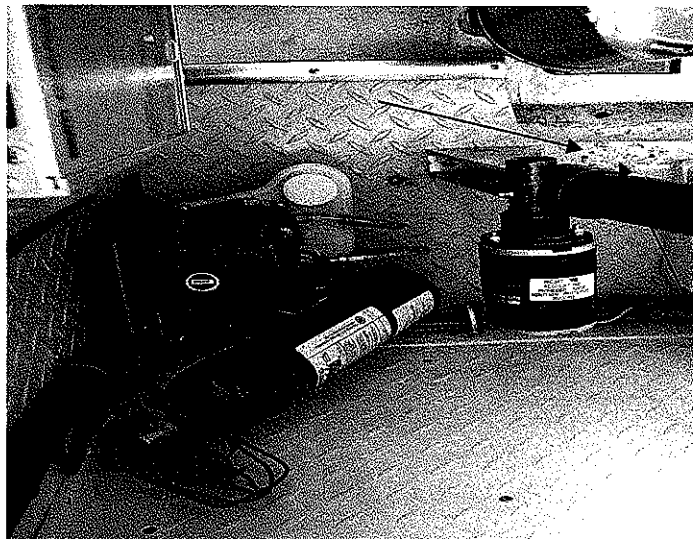


Hull ID No: DNAZ8001E203

Photo No: 38

Date Taken: 08/17/04

**Comments: Different Angle of
Picture #37**

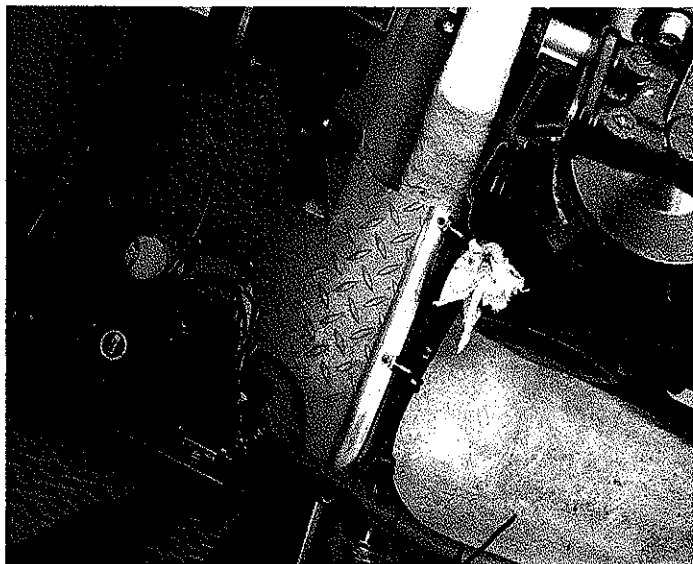


Hull ID No: DNAZ8001E203

Photo No: 39

Date Taken: 08/17/04

Comments: STBD Engine Hatch Lift



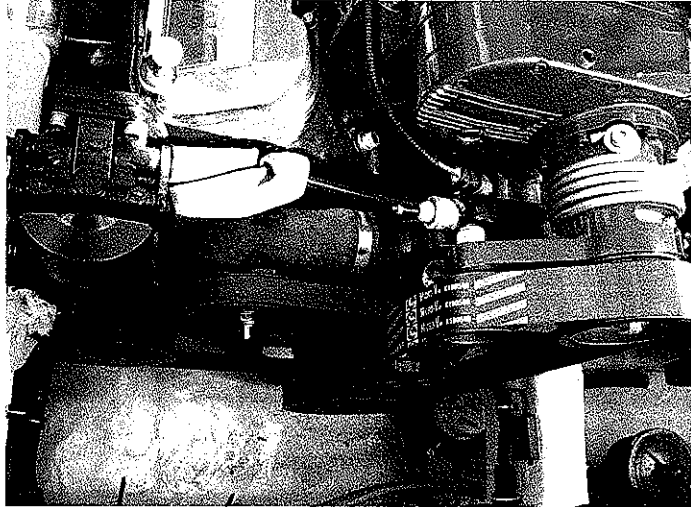
Hull ID No: DNAZ8001E203

Photo No: 40

Date Taken: 08/17/04

Comments: STBD Engine

Indicating Belts Currently Installed

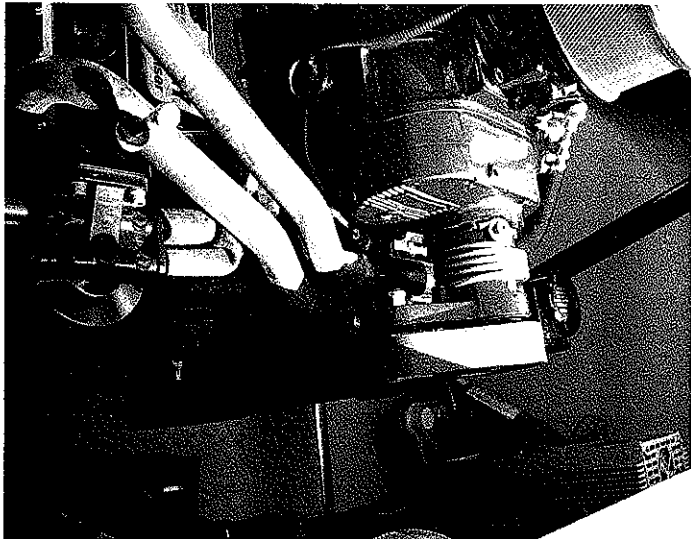


Hull ID No: DNAZ8001E203

Photo No: 41

Date Taken: 08/17/04

Comments: Front of Port Engine

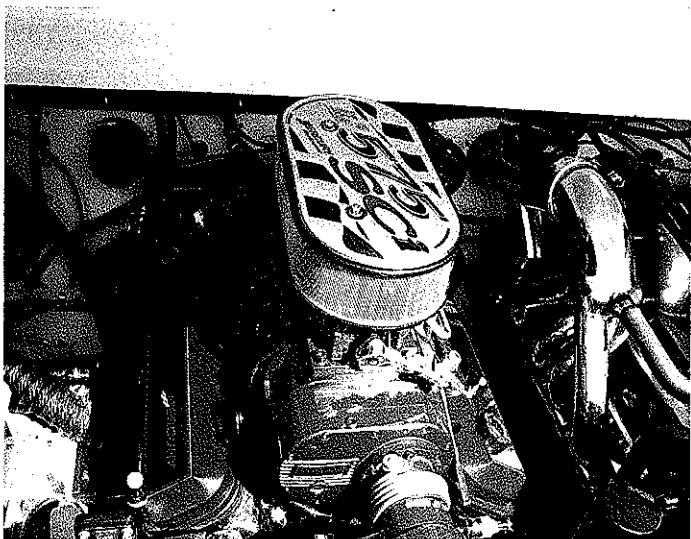


Hull ID No: DNAZ8001E203

Photo No: 42

Date Taken: 08/17/04

**Comments: STBD Engine, Headers
Removed**

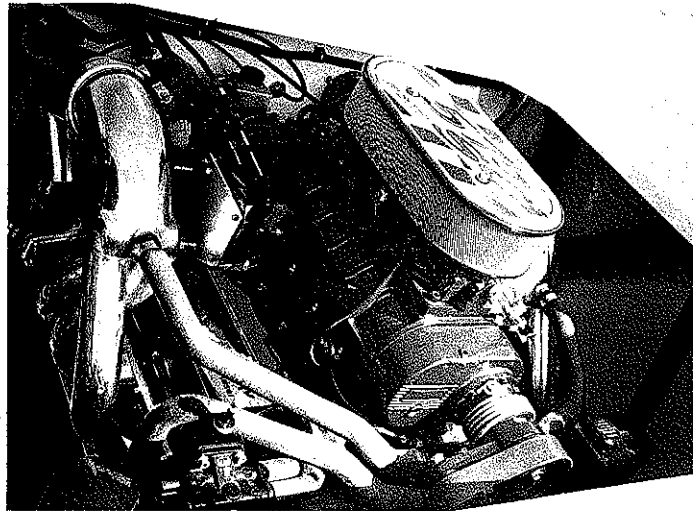


Hull ID No: DNAZ8001E203

Photo No: 43

Date Taken: 08/17/04

Comments: Port Engine



Hull ID No: DNAZ8001E203

Photo No: 44

Date Taken: 08/17/04

**Comments: STBD Side STBD
Engine Exhaust**



Hull ID No: DNAZ8001E203

Photo No: 45

Date Taken: 08/17/04

**Comments: Port Side STBD Engine
Exhaust**



Hull ID No: DNAZ8001E203

Photo No: 46

Date Taken: 08/17/04

**Comments: Access Hole to Waste
Tank (created by owner)**



Hull ID No: DNAZ8001E203

Photo No: 47

Date Taken: 08/17/04

**Comments: STBD Engine Serial
Number**

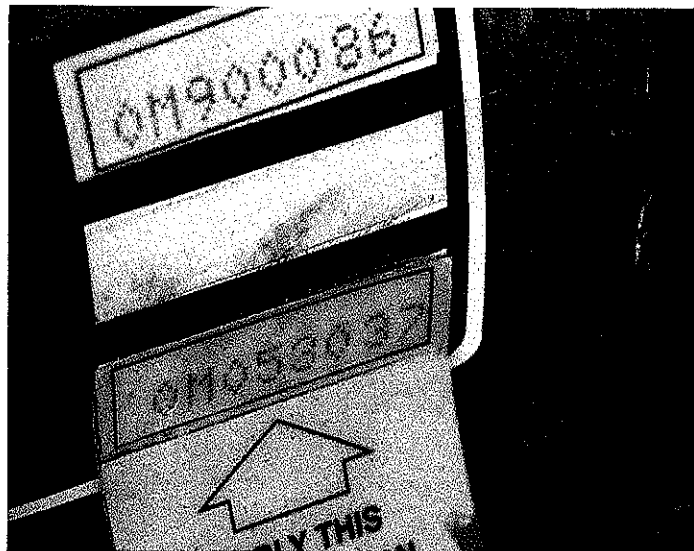


Hull ID No: DNAZ8001E203

Photo No: 48

Date Taken: 08/17/04

**Comments: STBD Port Engine
Serial Number**



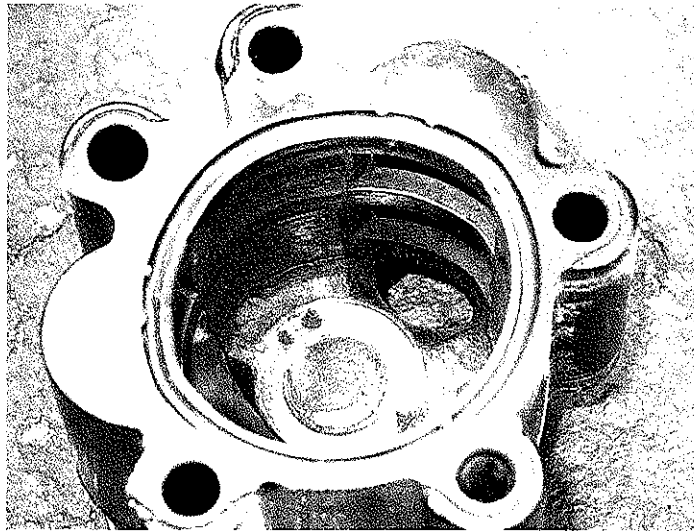
Hull ID No: DNAZ8001E203

Photo No: 49

Date Taken: 08/17/04

Comments: STBD Raw Water

Pump Impeller Housing



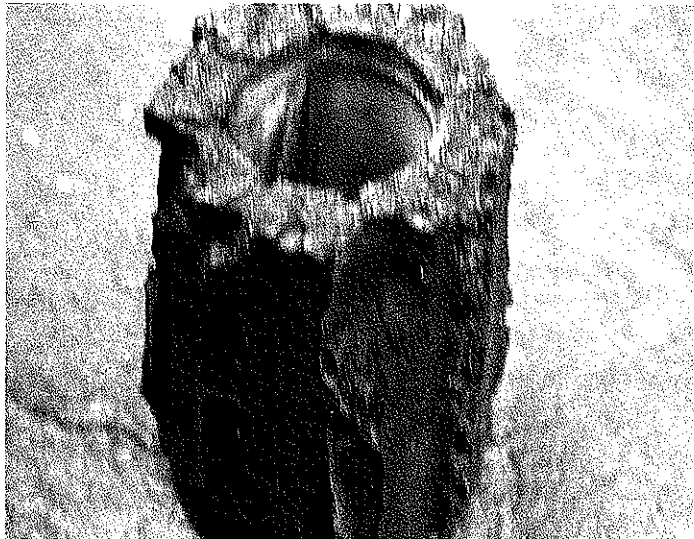
Hull ID No: DNAZ8001E203

Photo No: 50

Date Taken: 08/17/04

Comments: STBD Raw Water Pump

Impeller



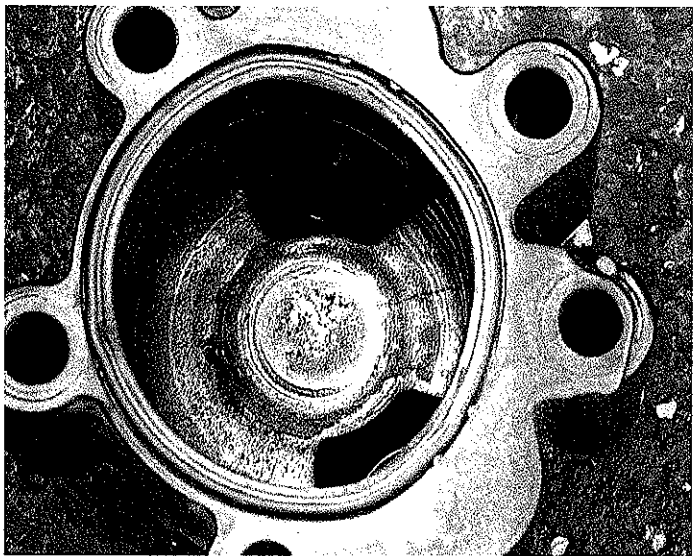
Hull ID No: DNAZ8001E203

Photo No: 51

Date Taken: 08/17/04

Comments: Port Raw Water Pump

Impeller Housing



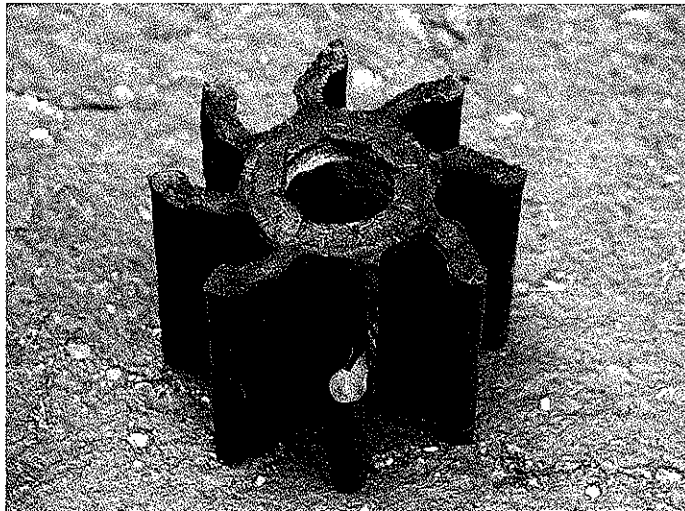
Hull ID No: DNAZ8001E203

Photo No: 52

Date Taken: 08/17/04

Comments: Port Raw Water Pump

Impeller



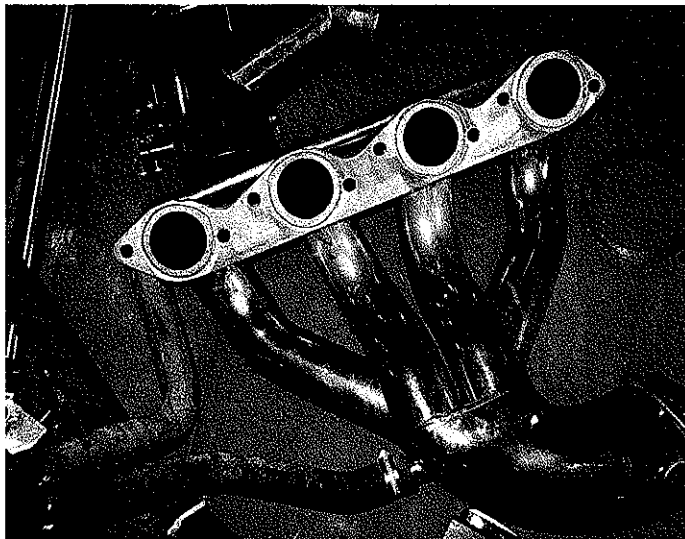
Hull ID No: DNAZ8001E203

Photo No: 53

Date Taken: 08/17/04

Comments: Exhaust Headers for

STBD Engine



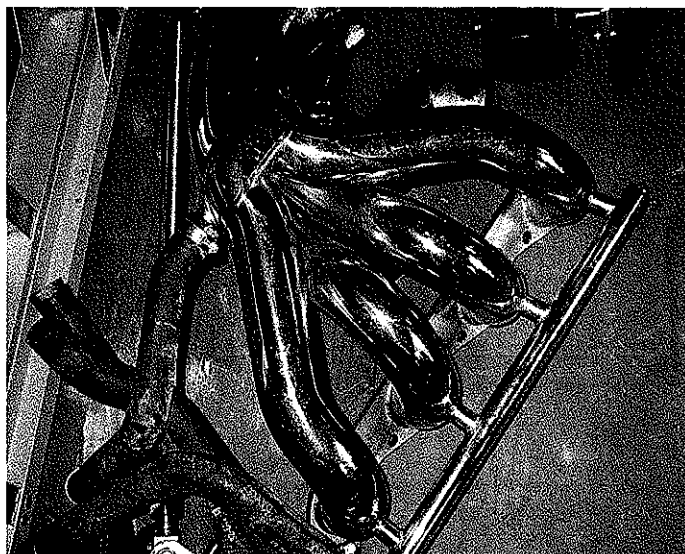
Hull ID No: DNAZ8001E203

Photo No: 54

Date Taken: 08/17/04

Comments: Exhaust Headers for

STBD Engine



Hull ID No: DNAZ8001E203

Photo No: 55

Date Taken: 08/17/04

**Comments: Exhaust Headers for
STBD Engine**

